

A bill for an act

relating to commerce; regulating debt management and debt settlement services; amending Minnesota Statutes 2008, sections 332A.02, subdivisions 5, 8, 9, 10, 13, by adding a subdivision; 332A.04, subdivision 6; 332A.08; 332A.10; 332A.11, subdivision 2; 332A.14; proposing coding for new law as Minnesota Statutes, chapter 332B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 332A.02, is amended by adding a subdivision to read:

Subd. 2a. **Advertise.** "Advertise" means to solicit business through any means or medium.

Sec. 2. Minnesota Statutes 2008, section 332A.02, subdivision 5, is amended to read:

Subd. 5. **Controlling or affiliated party.** "Controlling or affiliated party" means any person or entity that controls or is controlled, directly or indirectly ~~controlling, controlled by,~~ or is under common control with another person. Controlling or affiliated party includes, but is not limited to, employees, officers, independent contractors, corporations, partnerships, and limited liability corporations.

Sec. 3. Minnesota Statutes 2008, section 332A.02, subdivision 8, is amended to read:

Subd. 8. **Debt management services provider.** "Debt management services provider" means any person offering or providing debt management services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. This term includes any person to whom duties under a debt management services agreement or

debt management services plan are delegated, and does not include services performed
by the following when engaged in the regular course of their respective businesses and
professions:

(1) attorneys at law, escrow agents, accountants, broker-dealers in securities;

(2) state or national banks, trust companies, savings associations, title insurance
companies, insurance companies, and all other lending institutions duly authorized to
transact business in Minnesota, provided no fee is charged for the service;

(3) persons who, as employees on a regular salary or wage of an employer not
engaged in the business of debt management, perform credit services for their employer;

(4) public officers acting in their official capacities and persons acting as a debt
management services provider pursuant to court order;

(5) any person while performing services incidental to the dissolution, winding up,
or liquidation of a partnership, corporation, or other business enterprise;

(6) the state, its political subdivisions, public agencies, and their employees;

(7) credit unions and collection agencies, provided no fee is charged for the service;

(8) "qualified organizations" designated as representative payees for purposes of the
Social Security and Supplemental Security Income Representative Payee System and the
federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;

(9) accelerated mortgage payment providers. "Accelerated mortgage payment
providers" are persons who, after satisfying the requirements of sections 332.30 to
332.303, receive funds to make mortgage payments to a lender or lenders, on behalf
of mortgagors, in order to exceed regularly scheduled minimum payment obligations
under the terms of the indebtedness. The term does not include: (i) persons or entities
described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and
thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to
make loans under section 47.20, subdivision 1. For purposes of this clause and sections
332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever
is the current mortgage holder;

(10) trustees, guardians, and conservators; and

(11) debt settlement services providers.

Sec. 4. Minnesota Statutes 2008, section 332A.02, subdivision 9, is amended to read:

Subd. 9. **Debt management services.** "Debt management services" means the
provision of any ~~one or more of the following services in connection with debt incurred~~
~~primarily for personal, family, or household services.~~

~~(1) managing the financial affairs of an individual by distributing income or money to the individual's creditors;~~

~~(2) receiving funds for the purpose of distributing the funds among creditors in payment or partial payment of obligations of a debtor; or~~

~~(3) adjusting, prorating, pooling, or liquidating the indebtedness of a debtor whereby a debt management services provider assists in managing the financial affairs of a debtor by distributing periodic payments to the debtor's creditors from funds that the debt management services provider receives from the debtor and where the primary purpose of the services is to effect repayment of debt incurred primarily for personal, family, or household services.~~

Any person so engaged or holding out as so engaged is deemed to be engaged in the provision of debt management services regardless of whether or not a fee is charged for such services.

Sec. 5. Minnesota Statutes 2008, section 332A.02, subdivision 10, is amended to read:

Subd. 10. **Debtor.** "Debtor" means the person for whom the debt ~~prorating service~~ is management services are performed.

Sec. 6. Minnesota Statutes 2008, section 332A.02, subdivision 13, is amended to read:

Subd. 13. **Debt settlement services provider.** "Debt settlement services provider" ~~means any person engaging in or holding out as engaging in the business of negotiating, adjusting, or settling debt incurred primarily for personal, family, or household purposes without holding or receiving the debtor's funds or personal property and without paying the debtor's funds to, or distributing the debtor's property among, creditors~~ has the meaning given in section 332B.02, subdivision 9. The term shall not include persons listed in subdivision 8, clauses (1) to (10).

Sec. 7. Minnesota Statutes 2008, section 332A.04, subdivision 6, is amended to read:

Subd. 6. **Right of action on bond.** If the registrant has failed to account to a debtor or distribute to the debtor's creditors the amounts required by this chapter ~~and, or has failed to perform any of the services promised in~~ the debt management services agreement between the debtor and registrant, the registrant is in default. The debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given under this section, for loss suffered by the debtor, not exceeding the

4.1 face amount of the bond or security, and without the necessity of joining the registrant
4.2 in the suit or action based on the default.

4.3 Sec. 8. Minnesota Statutes 2008, section 332A.08, is amended to read:

4.4 **332A.08 DENIAL OF REGISTRATION.**

4.5 The commissioner, with notice to the applicant by certified mail sent to the address
4.6 listed on the application, may deny an application for a registration upon finding that
4.7 the applicant:

4.8 (1) has submitted an application required under section 332A.04 that contains
4.9 incorrect, misleading, incomplete, or materially untrue information. An application is
4.10 incomplete if it does not include all the information required in section 332A.04;

4.11 (2) has failed to pay any fee or pay or maintain any bond required by this chapter,
4.12 or failed to comply with any order, decision, or finding of the commissioner made under
4.13 and within the authority of this chapter;

4.14 (3) has violated any provision of this chapter or any rule or direction lawfully made
4.15 by the commissioner under and within the authority of this chapter;

4.16 (4) or any controlling or affiliated party has ever been convicted of a crime or found
4.17 civilly liable for an offense involving moral turpitude, including forgery, embezzlement,
4.18 obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any
4.19 other similar offense or violation, or any violation of a federal or state law or regulation
4.20 in connection with activities relating to the rendition of debt management services or
4.21 any consumer fraud, false advertising, deceptive trade practices, or similar consumer
4.22 protection law;

4.23 (5) has had a registration or license previously revoked or suspended in this state or
4.24 any other state or the applicant or licensee has been permanently or temporarily enjoined
4.25 by any court of competent jurisdiction from engaging in or continuing any conduct or
4.26 practice involving any aspect of the debt management services provider business; or
4.27 any controlling or affiliated party has been an officer, director, manager, or shareholder
4.28 owning more than a ten percent interest in a debt management services provider whose
4.29 registration has previously been revoked or suspended in this state or any other state, or
4.30 who has been permanently or temporarily enjoined by any court of competent jurisdiction
4.31 from engaging in or continuing any conduct or practice involving any aspect of the debt
4.32 management services provider business;

4.33 (6) has made any false statement or representation to the commissioner;

4.34 (7) is insolvent;

(8) refuses to fully comply with an investigation or examination of the debt management services provider by the commissioner;

(9) has improperly withheld, misappropriated, or converted any money or properties received in the course of doing business;

(10) has failed to have a trust account with an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account;

(11) has defaulted in making payments to creditors on behalf of debtors as required by agreements between the provider and debtor; ~~or~~

(12) has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; or

(13) has been shown to have engaged in a pattern of failing to perform the services promised.

Sec. 9. Minnesota Statutes 2008, section 332A.10, is amended to read:

332A.10 WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.

Subdivision 1. **Written agreement required.** (a) A debt management services provider may not perform any debt management services or receive any money related to a debt management services plan until the provider has obtained a debt management services agreement that contains all terms of the agreement between the debt management services provider and the debtor.

(b) A debt management services agreement must:

(1) be in writing, dated, and signed by the debt management services provider and the debtor;

(2) conspicuously indicate whether or not the debt management services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt management services provider advertised in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.

Subd. 2. **Actions prior to written agreement.** No person may provide debt management services for a debtor or execute a debt management services agreement unless the person first has:

(1) provided the debtor individualized counseling and educational information that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, and personal savings strategies;

(2) prepared in writing and provided to the debtor, in a form that the debtor may keep, an individualized financial analysis and a proposed debt management services plan listing the debtor's known debts with specific recommendations regarding actions the debtor should take to reduce or eliminate the amount of the debts, including written disclosure that debt management services are not suitable for all debtors and that there are other ways, including bankruptcy, to deal with indebtedness;

(3) made a determination supported by an individualized financial analysis that the debtor can reasonably meet the requirements of the proposed debt management services plan and that there is a net tangible benefit to the debtor of entering into the proposed debt management services plan; ~~and~~

(4) prepared, in a form the debtor may keep, a written list identifying all known creditors of the debtor that the provider reasonably expects to participate in the plan and the creditors, including secured creditors, that the provider reasonably expects not to participate; and

(5) disclosed, in addition to the written disclosure on the agreement required under subdivision 1, whether or not the debt management services provider is registered with the Minnesota Department of Commerce and any registration number.

Subd. 3. **Required terms provisions.** (a) Each debt management services agreement must contain the following ~~terms provisions~~, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or a portion of the ~~initial origination~~ fee ~~amount~~ is refundable or nonrefundable;

(2) the monthly fee amount or percentage to be paid by the debtor; and

(3) the total amount of fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt management services agreement must also contain the following:

(1) a disclosure that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditors, the length of the debt management services agreement will be extended and remain in force and that the total dollar charges agreed upon may increase at the rate agreed upon in the original contract agreement;

(2) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332A.11;

(3) a detailed description of all services to be performed by the debt management services provider for the debtor;

(4) the debt management services provider's refund policy; and
(5) the debt management services provider's principal business address and the name and address of its agent in this state authorized to receive service of process.

Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt management services agreement:

- (1) a hold harmless clause;
- (2) a confession of judgment, or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding;
- (3) a waiver of the right to a jury trial, if applicable, in any action brought by or against a debtor;
- (4) an assignment of or an order for payment of wages or other compensation for services;
- (5) a provision in which the debtor agrees not to assert any claim or defense arising out of the debt management services agreement;
- (6) a waiver of any provision of this chapter or a release of any obligation required to be performed on the part of the debt management services provider; or
- (7) a mandatory arbitration or choice of law clause.

Subd. 5. **New debt management services agreements; modification of existing agreements.** (a) Separate and additional debt management services agreements that comply with this chapter may be entered into by the debt management services provider and the debtor provided that no additional ~~initial~~ origination fee may be charged by the debt management services provider.

(b) Any modification of an existing debt management services agreement, including any increase in the number or amount of debts included in the debt management ~~service~~ services agreement, must be in writing and signed by both parties, except that the signature of the debtor is not required if:

(1) a creditor is added to or deleted from a debt management services agreement at the request of the debtor or a debtor voluntarily increases the amount of a payment, provided the debt management services provider must provide an updated payment schedule to the debtor within seven days; or

(2) the payment amount to a creditor in the agreement increases by \$10 or less and the total payment amount to all creditors increases a total of \$20 or less as a result of incorrect or incomplete information provided by the debtor regarding the amount of debt owed a creditor, provided the debt management services provider must notify the debtor of the increase within seven days.

No fees, charges, or other consideration may be demanded from the debtor for the modification, other than an increase in the amount of the monthly maintenance fee established in the original debt management services agreement.

Sec. 10. Minnesota Statutes 2008, section 332A.11, subdivision 2, is amended to read:

Subd. 2. **Notice of debtor's right to cancel.** A debt management services agreement must contain, on its face, in an easily readable ~~typeface~~ type immediately adjacent to the space for signature by the debtor, the following notice: "Right To Cancel: You have the right to cancel this contract at any time on ten days' written notice."

Sec. 11. Minnesota Statutes 2008, section 332A.14, is amended to read:

332A.14 PROHIBITIONS.

~~A registrant~~ (a) No debt management services provider shall not:

(1) purchase from a creditor any obligation of a debtor;

(2) use, threaten to use, seek to have used, or seek to have threatened the use of any legal process, including but not limited to garnishment and repossession of personal property, against any debtor while the debt management services agreement between the registrant and the debtor remains executory;

(3) advise, counsel, or encourage a debtor to stop paying a creditor ~~until a debt management services plan is in place~~, or imply, infer, encourage, or in any other way indicate, that it is advisable to stop paying a creditor;

(4) sanction or condone the act by a debtor of ceasing payments or imply, infer, or in any manner indicate that the act of ceasing payments is advisable or beneficial to the debtor;

~~(4)~~ (5) require as a condition of performing debt management services the purchase of any services, stock, insurance, commodity, or other property or any interest therein either by the debtor or the registrant;

~~(5)~~ (6) compromise any debts unless the prior written approval of the debtor has been obtained to such compromise and unless such compromise inures solely to the benefit of the debtor;

~~(6)~~ (7) receive from any debtor as security or in payment of any fee a promissory note or other promise to pay or any mortgage or other security, whether as to real or personal property;

~~(7)~~ (8) lend money or provide credit to any debtor if any interest or fee is charged, or directly or indirectly collect any fee for referring, advising, procuring, arranging, or

assisting a consumer in obtaining any extension of credit or other debtor service from a lender or debt management services provider;

~~(8)~~ (9) structure a debt management services agreement that would result in negative amortization of any debt in the plan;

~~(9)~~ (10) engage in any unfair, deceptive, or unconscionable act or practice in connection with any service provided to any debtor;

~~(10)~~ (11) offer, pay, or give any material cash fee, gift, bonus, premium, reward, or other compensation to any person for referring any prospective customer to the registrant or for enrolling a debtor in a debt management services plan, or provide any other incentives for employees or agents of the debt management services provider to induce debtors to enter into a debt management services plan;

~~(11)~~ (12) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf in connection with activities as a registrant, provided that this paragraph does not apply to a registrant which is a bona fide nonprofit corporation duly organized under chapter 317A or under the similar laws of another state;

~~(12)~~ (13) enter into a contract with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and will be benefited by the plan;

~~(13)~~ (14) in any way charge or purport to charge or provide any debtor credit insurance in conjunction with any contract or agreement involved in the debt management services plan;

~~(14)~~ (15) operate or employ a person who is an employee or owner of a collection agency or process-serving business; or

~~(15)~~ (16) solicit, demand, collect, require, or attempt to require payment of a sum that the registrant states, discloses, or advertises to be a voluntary contribution to a debt management services provider or designee from the debtor.

Sec. 12. **[332B.02] DEFINITIONS.**

Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context, for the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Advertise.** "Advertise" means to solicit business through any means or medium.

10.1 Subd. 3. **Aggregate debt.** "Aggregate debt" means the total of principal and interest
10.2 that is owed by the debtor to the creditors at the time of execution of the debt settlement
10.3 agreement.

10.4 Subd. 4. **Attorney general.** "Attorney general" means the attorney general of the
10.5 state of Minnesota.

10.6 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

10.7 Subd. 6. **Controlling or affiliated party.** "Controlling or affiliated party" means
10.8 any person or entity that controls or is controlled, directly or indirectly, or is under
10.9 common control with another person. Controlling or affiliated party includes, but is not
10.10 limited to, employees, officers, independent contractors, corporations, partnerships, and
10.11 limited liability corporations.

10.12 Subd. 7. **Debt settlement services.** "Debt settlement services" means any one or
10.13 more of the following activities:

10.14 (1) offering to provide advice, or offering to act or acting as an intermediary between
10.15 a debtor and one or more of the debtor's creditors, where the primary purpose of the
10.16 advice or action is to obtain a settlement for less than the full amount of debt, whether
10.17 in principal, interest, fees, or other charges, incurred primarily for personal, family, or
10.18 household purposes including, but not limited to, offering debt negotiation, debt reduction,
10.19 or debt relief services; or

10.20 (2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in
10.21 an account for future payment of a reduced amount of debt to one or more of the debtor's
10.22 creditors.

10.23 Any person so engaged or holding out as so engaged is deemed to be engaged in
10.24 the provision of debt settlement services, regardless of whether or not a fee is charged for
10.25 such services.

10.26 Subd. 8. **Debt settlement services agreement.** "Debt settlement services
10.27 agreement" means the written contract between the debt settlement services provider
10.28 and the debtor.

10.29 Subd. 9. **Debt settlement services plan.** "Debt settlement services plan" means the
10.30 debtor's individualized package of debt settlement services set forth in the debt settlement
10.31 services agreement.

10.32 Subd. 10. **Debt settlement services provider.** "Debt settlement services provider"
10.33 means any person offering or providing debt settlement services to a debtor domiciled
10.34 in this state, regardless of whether or not a fee is charged for the services and regardless
10.35 of whether the person maintains a physical presence in the state. The term includes any

11.1 person to whom duties under a debt management agreement or debt management plan
11.2 are delegated.

11.3 Subd. 11. **Person.** "Person" means an individual, firm, partnership, association,
11.4 or corporation.

11.5 Sec. 13. **[332B.03] REQUIREMENT OF REGISTRATION.**

11.6 On or after August 1, 2009, it is unlawful for any person, whether or not located
11.7 in this state, to operate as a debt settlement services provider or provide debt settlement
11.8 services including, but not limited to, offering, advertising, or executing or causing to be
11.9 executed any debt settlement services or debt settlement services agreement, except as
11.10 authorized by law, without first becoming registered as provided in this chapter. Debt
11.11 settlement services providers may continue to provide debt settlement services without
11.12 complying with this chapter to those debtors who entered into a contract to participate
11.13 in a debt settlement services plan prior to August 1, 2009, but may not enter into a debt
11.14 settlement services agreement with a debt on or after August 1, 2009, without complying
11.15 with this chapter.

11.16 Sec. 14. **[332B.04] REGISTRATION.**

11.17 Subdivision 1. **Form.** Application for registration to operate as a debt settlement
11.18 services provider in this state must be made in writing to the commissioner, under oath, in
11.19 the form prescribed by the commissioner, and must contain:

11.20 (1) the full name of each principal of the entity applying;

11.21 (2) the address, which must not be a post office box, and the telephone number and,
11.22 if applicable, the e-mail address, of the applicant;

11.23 (3) consent to the jurisdiction of the courts of this state;

11.24 (4) the name and address of the registered agent authorized to accept service of
11.25 process on behalf of the applicant or appointment of the commissioner as the applicant's
11.26 agent for purposes of accepting service of process;

11.27 (5) disclosure of:

11.28 (i) whether any controlling or affiliated party has ever been convicted of a crime
11.29 or found civilly liable for an offense involving moral turpitude, including forgery,
11.30 embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to
11.31 defraud, or any other similar offense or violation, or any violation of a federal or state
11.32 law or regulation in connection with activities relating to the rendition of debt settlement
11.33 services or involving any consumer fraud, false advertising, deceptive trade practices, or
11.34 similar consumer protection law;

12.1 (ii) any judgments, private or public litigation, tax liens, written complaints,
12.2 administrative actions, or investigations by any government agency against the applicant
12.3 or any officer, director, manager, or shareholder owning more than five percent interest
12.4 in the applicant, unresolved or otherwise, filed or otherwise commenced within the
12.5 preceding ten years;

12.6 (iii) whether the applicant or any person employed by the applicant has had a record
12.7 of having defaulted in the payment of money collected for others, including the discharge
12.8 of debts through bankruptcy proceedings; and

12.9 (iv) whether the applicant's license or registration to provide debt settlement services
12.10 in any other state has ever been revoked or suspended;

12.11 (6) a copy of the applicant's standard debt settlement services agreement that the
12.12 applicant intends to execute with debtors;

12.13 (7) proof of accreditation; and

12.14 (8) any other information and material as the commissioner may require.

12.15 The commissioner may, for good cause shown, temporarily waive any requirement
12.16 of this subdivision.

12.17 Subd. 2. **Term and scope of registration.** A registration is effective until 11:59
12.18 p.m. on December 31 of the year for which the application for registration is filed or until
12.19 it is surrendered by the registrant or revoked or suspended by the commissioner. The
12.20 registration is limited solely to the business of providing debt settlement services.

12.21 Subd. 3. **Fees; bond.** An applicant for registration as a debt settlement services
12.22 provider must comply with the requirements of section 332A.04, subdivisions 3, 4, and 5.

12.23 Subd. 4. **Right of action on bond.** If the registrant has failed to account to a debtor,
12.24 or has failed to perform any of the services promised, the registrant is in default. The
12.25 debtor or the debtor's legal representative or receiver, the commissioner, or the attorney
12.26 general, shall have, in addition to all other legal remedies, a right of action in the name of
12.27 the debtor on the bond or the security given under this section, for loss suffered by the
12.28 debtor, not exceeding the face amount of the bond or security, and without the necessity of
12.29 joining the registrant in the suit or action based on the default.

12.30 Subd. 5. **Registrant list.** The commissioner must maintain a list of registered debt
12.31 settlement services providers. The list must be made available to the public in written
12.32 form upon request and on the Department of Commerce Web site.

12.33 Subd. 6. **Renewal of registration.** Each year, each registrant under the provisions
12.34 of this chapter must not, more than 60 nor less than 30 days before its registration is to
12.35 expire, apply to the commissioner for renewal of its registration on a form prescribed by
12.36 the commissioner. The application must be signed by the registrant under penalty of

perjury, contain current information on all matters required in the original application, and be accompanied by a payment of \$250. The registrant must maintain a continuous surety bond that satisfies the requirements of section 332A.04, subdivision 4. The renewal is effective for one year. The commissioner may, for good cause shown, temporarily waive any requirement of this section.

Sec. 15. **[332B.05] DENIAL, SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.**

Subdivision 1. **Denial.** The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a registration for any of the reasons specified under section 332A.08.

Subd. 2. **Suspension, revocation, or nonrenewal.** The commissioner may suspend, revoke, or refuse to renew any registration issued under this chapter, or may levy a civil penalty under section 45.027, or any combination of actions, if the debt settlement services provider or any controlling or affiliated person has committed any act or omission for which the commissioner could have refused to issue an initial registration.

Subd. 3. **Procedure.** Suspension, revocation, or nonrenewal must be upon notice and under the conditions prescribed in section 332A.09, subdivision 1. Upon issuance of an order suspending, revoking, or refusing to renew a registration, the commissioner:

(1) shall follow the procedure established in section 332A.09, subdivision 2; and

(2) may follow the procedure specified in section 332A.09, subdivision 3, concerning the appointment of a receiver for funds of sanctioned registrants.

Sec. 16. **[332B.06] WRITTEN DEBT SETTLEMENT SERVICES AGREEMENT; DISCLOSURES; TRUST ACCOUNT.**

Subdivision 1. **Written agreement required.** (a) A debt settlement services provider may not perform any debt settlement services until the provider has obtained a debt settlement services agreement that contains all terms of the agreement between the debt settlement services provider and the debtor.

(b) A debt settlement services agreement must:

(1) be in writing, dated, and signed by the debt settlement services provider and the debtor;

(2) conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce and include any registration number; and

14.1 (3) be written in the debtor's primary language if the debt settlement services
14.2 provider advertises in that language.

14.3 (c) The registrant must furnish the debtor with a copy of the signed contract upon
14.4 execution.

14.5 Subd. 2. **Actions prior to executing a written agreement.** No person may provide
14.6 debt settlement services for a debtor or execute a debt settlement services agreement
14.7 unless the person first has:

14.8 (1) provided the debtor individualized counseling that, at a minimum, addresses
14.9 managing household finances, managing credit and debt, budgeting, personal savings
14.10 strategies, and a detailed description of all the various ways to reduce or eliminate the
14.11 debt, which must, at a minimum, include bankruptcy; and

14.12 (2) prepared in writing and provided to the debtor, in a form the debtor may keep,
14.13 an individualized financial analysis of the debtor's financial circumstances, including
14.14 income and liabilities, and made a determination supported by the individualized financial
14.15 analysis that:

14.16 (i) the debt settlement plan proposed for addressing the debt is suitable for the
14.17 individual debtor;

14.18 (ii) the debtor can reasonably meet the requirements of the proposed debt settlement

14.19 services plan; and

14.20 (iii) there is a net tangible benefit to the debtor of entering into the proposed debt
14.21 settlement services plan.

14.22 Subd. 3. **Disclosures.** (a) A person offering to provide or providing debt settlement
14.23 services must disclose both orally and in writing:

14.24 (1) whether or not the person is registered with the Minnesota Department of
14.25 Commerce and any registration number; and

14.26 (2) that no fees may be charged until all the services promised are performed.

14.27 (b) No person may provide debt settlement services unless the person first has
14.28 provided, both orally and in writing, on a single sheet of paper, separate from any other
14.29 document or writing, the following verbatim notice:

14.30 **WARNING**

14.31 We CANNOT GUARANTEE that you will successfully reduce or eliminate your
14.32 debt.

14.33 You SHOULD NOT stop paying your creditors.

14.34 Fees, interest, and other charges will continue to mount up during the (insert
14.35 number) months this plan is in effect.

14.36 Even if you sign up for this service:

• YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

• YOU MAY STILL BE CONTACTED BY CREDITORS.

• YOU MAY STILL BE SUED BY CREDITORS for the money you owe.

Even if we do settle your debt, YOU MAY STILL HAVE TO PAY TAXES on the amount forgiven.

Your credit rating may be adversely affected.

(c) The heading, "WARNING," must be in bold, underlined, 28-point type, and the remaining text must be in 14-point type, with a double space between each statement.

(d) The disclosure and notice required under this subdivision must be provided in the debtor's primary language if the debt settlement provider advertises in that language.

Subd. 4. **Required information.** (a) Each debt settlement services agreement must contain the following information, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or part of the origination fee is refundable or nonrefundable; and

(2) the service fee formula and the total amount of service fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt settlement services agreement must also contain the following:

(1) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332B.07;

(2) a detailed description of all services to be performed by the debt settlement services provider for the debtor;

(3) the debt settlement services provider's refund policy;

(4) the debt settlement services provider's principal business address, which must not be a post office box, and the name and address of its agent in this state authorized to receive service of process; and

(5) the name of each creditor the debtor has listed and the aggregate debt owed to each creditor that will be the subject of settlement.

Subd. 5. **Prohibited terms.** A debt settlement services agreement may not contain any of the terms prohibited under section 332A.10, subdivision 4.

Subd. 6. **New debt settlement services agreements; modifications of existing agreements.** (a) Separate and additional debt settlement services agreements that comply with this chapter may be entered into by the debt settlement services provider and the debtor, provided that no additional origination fee may be charged by the debt settlement services provider.

(b) Any modification of an existing debt settlement services agreement, including any increase in the number or amount of debts included in the debt settlement services agreement, must be in writing and signed by both parties. No fee may be charged to modify an existing agreement.

Subd. 7. Payments held in trust. If the registrant holds funds for the debtor, the registrant must maintain a separate trust account and deposit in the account all payments received from the moment that the funds are available, except that the registrant may commingle the payment with the registrant's own property or funds, but only to the extent necessary to ensure the maintenance of a minimum balance if the financial institution at which the trust account is held requires a minimum balance to avoid the assessment of fees or penalties for failure to maintain a minimum balance. All disbursements, whether to the debtor or to the creditors of the debtor, or to the registrant, must be made from such account.

Sec. 17. **[332B.07] RIGHT TO CANCEL.**

Subdivision 1. Debtor's right to cancel. (a) A debtor has the right to cancel a debt settlement services agreement without cause at any time upon ten days' written notice to the debt settlement services provider.

(b) In the event of cancellation, the debt settlement services provider must, within ten days of the cancellation, notify the debtor's creditors of the cancellation and provide a refund of all funds paid by or for the debtor to the debt settlement services provider, except for the origination fee specified in section 332B.09, subdivision 1.

Subd. 2. Notice of debtor's right to cancel. A debt settlement services agreement must contain, on its face, in an easily readable type immediately adjacent to the space for signature by the debtor, the following notice: "Right to Cancel: You have the right to cancel this contract at any time on ten days' written notice."

Subd. 3. Automatic termination. Upon the payment of all listed or settled debts and fees, the debt settlement services agreement must automatically terminate, and all unexpended funds paid by or for the debtor to the debt settlement services provider must be immediately returned to the debtor.

Subd. 4. Debt settlement services provider's right to cancel. (a) A debt settlement services provider may cancel a debt settlement services agreement with good cause upon 30 days' written notice to the debtor.

(b) Within ten days after the cancellation, the debt settlement services provider must:

(1) notify the debtor's creditors of the cancellation; and

(2) return to the debtor all funds paid by or for the debtor to the debt settlement provider, except for the origination fee specified in section 332B.09, subdivision 1.

Sec. 18. **[332B.08] BOOKS, RECORDS, AND INFORMATION.**

Subdivision 1. **Records retention; annual report.** Every registrant must keep, and use in the registrant's business, such books, accounts, and records, including electronic records, as will enable the commissioner to determine whether the registrant is complying with this chapter and the rules, orders, and directives adopted by the commissioner under this chapter. Every registrant must preserve such books, accounts, and records for at least six years after making the final entry on any transaction recorded therein. Examinations of the books, records, and method of operations conducted under the supervision of the commissioner shall be done at the cost of the registrant. The cost must be assessed as determined under section 46.131.

Subd. 2. **Annual report.** On or before March 15 of each calendar year, each registrant must file a report with the commissioner containing such information as the commissioner may require about the preceding calendar year. The report must be in a form the commissioner prescribes.

Subd. 3. **Statements to debtors.** (a) Each registrant must:

(1) maintain and make available records and accounts that will enable each debtor to ascertain the amounts paid to the creditors of the debtor. A statement showing amounts received from the debtor, disbursements to each creditor, amounts that any creditor has agreed to as payment in full for any debt owed the creditor by the debtor, charges deducted by the registrant, and other information as the commissioner may prescribe, must be furnished by the registrant to the debtor at least monthly and, in addition, upon any cancellation or termination of the contract;

(2) include in the statement furnished to debtors a list of all activities conducted pursuant to the contract, including the number and description of communications with each creditor during the reporting period; and

(3) prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practicable.

(b) Each debtor must have reasonable access, without cost, by electronic or other means, to information in the registrant's files applicable to the debtor. These statements, records, and accounts must otherwise remain confidential, except for duly authorized state and government officials, the commissioner, the attorney general, the debtor, and the debtor's representative and designees.

Sec. 19. **[332B.09] FEES, PAYMENTS, AND CONSENT OF CREDITORS.**

Subdivision 1. **Origination fee.** A debt settlement services provider may charge a nonrefundable origination fee of not more than \$50.

Subd. 2. **Service fee.** In addition to the origination fee under subdivision 1, a debt settlement services provider may charge a service fee equal to five percent of the savings actually negotiated by the debt settlement services provider. No other fees may be charged. The savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and total amount that the debtor actually pays to settle all the debts stated in the debt settlement services agreement, provided that only savings resulting from concessions actually negotiated by the debt settlement services provider may be counted.

Subd. 3. **Collection of fees.** No debt settlement services provider may claim, demand, charge, collect, or receive any compensation until after the debt settlement service provider has fully performed each and every service the provider has contracted to perform or represented would be performed.

Subd. 4. **Consent of creditors.** Before providing any services, a debt settlement services provider must obtain the written consent of all creditors that agree to participate in the debt settlement services plan set forth in the debt management services agreement. The debt settlement services provider must notify the debtor within ten days after any failure to obtain the required consent of any creditor and of the debtor's right to cancel the agreement without penalty. If not all creditors listed in the debt settlement services agreement have consented to participate in the debt settlement services plan, the debt settlement services provider must obtain the written authorization from the debtor to proceed with the debt settlement services agreement without the participation of all listed creditors.

Subd. 5. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt settlement services plan, the debt settlement services provider must promptly notify the debtor of the withdrawal, identify the creditor, and inform the debtor of the right to cancel the debt settlement services agreement. In no case may this notice be provided more than 15 days after the debt settlement services provider learns of the creditor's decision to withdraw from a plan.

Subd. 6. **Timely notification of settlement.** A debt settlement services provider must notify the debtor within 24 hours of settlement of a debt with a creditor.

Sec. 20. **[332B.10] PROHIBITIONS.**

No debt settlement services provider shall:

(1) engage in any activity, act, or omission prohibited under section 332A.14;

- 19.1 (2) enter into a debt settlement services agreement under which all debts listed will
19.2 not be settled within 12 months;
- 19.3 (3) promise, guarantee, or directly or indirectly imply, infer, or in any manner
19.4 represent that any debt will be settled prior to the presentation to the debtor of an offer by
19.5 the creditors participating in the debt settlement plan to settle;
- 19.6 (4) misrepresent the timing of negotiations with creditors;
- 19.7 (5) imply, infer, or in any manner represent that:
- 19.8 (i) fees, interest, and other charges will not continue to accrue prior to the time
19.9 debts are settled;
- 19.10 (ii) wages or bank accounts are not subject to garnishment;
- 19.11 (iii) creditors will not continue to contact the debtor;
- 19.12 (iv) the debtor is not subject to legal action; and
- 19.13 (v) the debtor will not be subject to tax consequences for the portion of any debts
19.14 forgiven;
- 19.15 (6) execute a power of attorney or any other agreement, oral or written, express
19.16 or implied, that extinguishes or limits the debtor's right at any time to contract or
19.17 communicate with any creditor or the creditor's right at any time to communicate with
19.18 the debtor;
- 19.19 (7) exercise or attempt to exercise a power of attorney after an individual has
19.20 terminated an agreement;
- 19.21 (8) state, imply, infer, or, in any other manner, indicate that entering into a debt
19.22 settlement services agreement or settling debts will either have no effect on, or improve,
19.23 the debtor's credit, credit rating, and credit score;
- 19.24 (9) challenge a debt without the written consent of the debtor;
- 19.25 (10) make any false or misleading claim regarding a creditor's right to collect a debt;
- 19.26 (11) prior to entering into a debt settlement services agreement, make, or attempt to
19.27 make a personal contact with the debtor without the debtor first having contacted the debt
19.28 settlement services provider seeking debt settlement services;
- 19.29 (12) represent that the debt settlement services provider can negotiate better
19.30 settlement terms with a creditor than the debtor alone can negotiate;
- 19.31 (13) provide or offer to provide legal advice or legal services unless the person
19.32 providing or offering to provide legal advice is licensed to practice law in the state;
- 19.33 (14) misrepresent that it is authorized or competent to furnish legal advice or
19.34 perform legal services; and

(15) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification from the creditor that the payment is in full settlement of the debt.

Sec. 21. **[332B.11] ADVERTISEMENT OF DEBT SETTLEMENT SERVICES PLAN.**

No debt settlement services provider may engage in any activity proscribed by section 332A.16, or represent, claim, imply, or infer that secured debts may be settled.

Sec. 22. **[332B.12] DEBT SETTLEMENT SERVICES AGREEMENT RESCISSION.**

Any debtor has the right to rescind any debt settlement services agreement with a debt settlement services provider that commits a material violation of this chapter. On rescission, all fees paid to the debt settlement services provider or any other person other than creditors of the debtor must be returned to the debtor entering into the debt settlement services agreement within ten days of rescission of the debt settlement services agreement.

Sec. 23. **[332B.13] ENFORCEMENT; REMEDIES.**

Subdivision 1. **Violation as deceptive practice.** A violation of any of the provisions of this chapter is considered an unfair or deceptive trade practice under section 8.31, subdivision 1. A private right of action under section 8.31 by an aggrieved debtor is in the public interest.

Subd. 2. **Private right of action.** (a) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable under this section in an individual action for the sum of:

(1) actual, incidental, and consequential damages sustained by the debtor as a result of the failure; and

(2) statutory damages of up to \$5,000.

(b) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable to the named plaintiffs under this section in a class action for the amount that each named plaintiff could recover under paragraph (a), clause (1), and to the other class members for such amount as the court may allow.

(c) In determining the amount of statutory damages, the court shall consider, among other relevant factors:

(1) the frequency, nature, and persistence of noncompliance;

(2) the extent to which the noncompliance was intentional; and

21.1 (3) in the case of a class action, the number of debtors adversely affected.

21.2 (d) A plaintiff or class successful in a legal or equitable action under this section is
21.3 entitled to the costs of the action, plus reasonable attorney fees.

21.4 Subd. 3. **Injunctive relief.** A debtor may sue a debt settlement services provider
21.5 for temporary or permanent injunctive or other appropriate equitable relief to prevent
21.6 violations of any provision of this chapter. A court must grant injunctive relief on a
21.7 showing that the debt settlement services provider has violated any provision of this
21.8 chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to
21.9 prevail on allegations that the debt settlement services provider violated any provision
21.10 of this chapter.

21.11 Subd. 4. **Remedies cumulative.** The remedies provided in this section are
21.12 cumulative and do not restrict any remedy that is otherwise available. The provisions
21.13 of this chapter are not exclusive and are in addition to any other requirements, rights,
21.14 remedies, and penalties provided by law.

21.15 Subd. 5. **Public enforcement.** The attorney general shall enforce this chapter
21.16 under section 8.31.

21.17 Sec. 24. **[332B.14] INVESTIGATIONS.**

21.18 At any reasonable time, the commissioner may examine the books and records of
21.19 every registrant and of any person engaged in the business of providing debt settlement
21.20 services. The commissioner, once during any calendar year, may require the submission
21.21 of an audit prepared by a certified public accountant of the books and records of each
21.22 registrant. If the registrant has, within one year previous to the commissioner's demand,
21.23 had an audit prepared for some other purpose, this audit may be submitted to satisfy the
21.24 requirement of this section. The commissioner may investigate any complaint concerning
21.25 violations of this chapter and may require the attendance and sworn testimony of witnesses
21.26 and the production of documents.